

**WILLIAM H. THOMAS (ISB 3154)
DANIEL E. WILLIAMS (ISB 3920)
CHRISTOPHER F. HUNTLEY (ISB 6056)
HUNTLEY PARK, THOMAS, BURKETT,
OLSEN & WILLIAMS**

**250 S. Fifth St., Suite 660
P.O. Box 2188
Boise, ID 83701-2188
Telephone: (208) 345-7800
Fax: (208) 345-7894
wmthomas@idahoatty.com
danw@idahoatty.com
chuntley@idahoatty.com**

Attorneys for Plaintiffs

U.S. COURTS

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CAMERON S. BURKE
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

**KIMBERLEY SMITH and MICHAEL)
B. HINKLEY, individually and on behalf)
of those similarly situated,)**

Plaintiffs,)

vs.)

**MICRON ELECTRONICS, INC., a)
Minnesota corporation,)**

Defendant.)

Case No. CIV 01-0244-S-EJL

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiffs Kimberley Smith and Michael B. Hinkley ("Plaintiffs"), individually and on behalf of those similarly situated, for their cause of action against the Defendant, claim and allege as follows:

INTRODUCTION

1. Defendant Micron Electronics, Inc., ("Micron") is a Minnesota corporation authorized to do and doing business in Idaho with its headquarters at Boise, Idaho.

2. Throughout its business operations, Defendant Micron has unlawfully (1) induced employees to work off the clock, (2) implicitly and explicitly allowed managers to alter employee timecards, (3) failed to calculate overtime pay accurately, (4) discouraged employees from keeping accurate time records, and (5) suppressed wage claims. These practices have been repeated, frequent and willful, rather than isolated, sporadic or accidental, and are long-standing.

3. Defendant Micron's stated policy is to prohibit work off the clock, but notwithstanding this policy and in order to save the expenses associated with the payment of overtime wages, Micron's management through its supervisors and managers (1) permits, encourages and tacitly demands that their non-exempt subordinates work off the clock and through lunch and rest breaks, (2) alters employee time records to avoid payment of wages earned, and (3) suppresses wage claims by leading employees to believe that working overtime without pay is a career-enhancing activity.

4. Employees of Defendant Micron wish to give statements about off-the-clock work and make claims for wages owing for work they have performed off the clock, but fear discrimination and retaliation by Micron if they do so. Upon information and belief, Defendant Micron has threatened, in violation of Section 15(a)(3) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. Section 215 (a)(3), to take, and has taken, disciplinary action against employees including dismissal, if they make claims for unpaid wages or otherwise admit to having worked off the clock, even while Defendant Micron has suffered and permitted them to perform such work.

5. Plaintiffs seek to end these illegal practices and recover compensatory, liquidated and punitive damages. Plaintiffs also seek equitable tolling of applicable statutes of limitation to permit recovery of unpaid wages during all past years employees have been subjected to (1) suppression of wage claims by threats of disciplinary action for making bona fide claims for uncompensated time Defendant Micron has permitted them to work, and (2) alteration of time records to avoid payment of wages earned.

JURISDICTION AND VENUE

6. Plaintiffs incorporate paragraphs 1 through 5 above.

7. Jurisdiction of this Court is invoked pursuant to, *inter alia*, Title 28 U.S.C. Section 1331 and 29 U.S.C. Section 216(b). The federal claim is not insubstantial.

8. This Court has jurisdiction over Plaintiffs' pendent state claims by virtue of Title 28 U.S.C. Section 1367.

9. Venue is proper under Title 28 U.S.C. Section 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims occurred in Meridian, Idaho, and (c) in that Defendant Micron is subject to personal jurisdiction in the District of Idaho.

PARTIES

10. Plaintiffs incorporate paragraphs 1 through 9 above.

11. Plaintiff Kimberley Smith ("Smith"), is an individual who is employed by Defendant Micron. Smith brings this action on behalf of herself and a class of others similarly situated and seeks relief as more specifically described below.

12. Plaintiff Smith is employed by Defendant Micron at its Meridian, Idaho, sales center. Her employment began in July, 2000. She is employed as an inside sales representative. Defendant

Micron classifies inside sales representatives as "non-exempt" under the FLSA. Smith is paid a base regular hourly rate of nine dollars (\$9.00). In addition, Smith receives a commission based upon the volume of her sales.

13. Plaintiff Michael B. Hinkley ("Hinkley"), is an individual who is employed by Defendant Micron. Hinkley brings this action on behalf of himself and a class of others similarly situated and seeks relief as more specifically described below.

14. Plaintiff Hinkley was employed by Defendant Micron at its Meridian, Idaho, sales center from April 24, 2000, to May 31, 2001. He was employed as an inside sales representative. Defendant Micron classifies inside sales representatives as "non-exempt" under the FLSA. Hinkley was paid a base regular hourly rate of nine dollars (\$9.00). In addition, Hinkley received a commission based upon the volume of his sales.

15. Micron Electronics, Inc., along with its subsidiaries, is a computing company which provides computer products and services, Internet offerings, Web hosting and business-to-business e-commerce applications for small and medium-sized businesses, government, education, and retail markets. Under the brands micronpc.com, NetFRAME, VelocityNet Direct ("VND"), HostPro and SpecTek, it purports to offer a wide range of innovative products, services and support. Defendant Micron has three business segments which are PC Systems, HostPro and SpecTek. Its PC Systems business develops, markets, manufactures, sells and supports a wide range of high-performance desktop and notebook systems and network servers under the micronpc.com and NetFRAME brand names and sells, resells and supports a variety of additional peripherals, software and services. HostPro, a Web hosting business, offers a range of business-to-business Internet products and services, including turnkey e-commerce solutions, Web and applications hosting, colocation and connectivity services. SpecTek processes and markets various grades of memory products in either component or module form for specific applications.

16. Defendant Micron, including its so-called "subsidiaries," has in excess of 1100 employees.

17. Defendant Micron is an "employer" within the meaning of the FLSA and Plaintiffs are "employees engaged in commerce" within the meaning of the FLSA. Plaintiffs are entitled to the protection afforded by the minimum-wage and overtime provisions of the FLSA and has standing under Section 16(b) of the FLSA to maintain this action on behalf of herself and other employees similarly situated.

FACTUAL ALLEGATIONS

18. Plaintiffs incorporate paragraphs 1 through 17 above.

19. Defendant Micron has a company-wide policy of compensating its hourly sales employees ("sales reps"), in part through a commission system. The commission system is calculated based on a commission schedule that varies from zero percent (0%) to one point six percent (1.6%) of various levels of sales made by sales reps. The sales reps also receive a base hourly rate of pay in addition to the commission. Plaintiffs' base hourly rate is nine dollars (\$9.00).

20. On occasion Defendant Micron has paid Plaintiffs and, upon information and belief, other sales reps overtime for hours worked in excess of forty hours in a workweek. However, Micron intentionally calculates overtime based solely upon the base hourly rate of nine dollars (\$9.00). Defendant Micron, in violation of the FLSA, does not include the commissions earned by Plaintiffs and other sales reps in the overtime calculation.

21. The purported regular working hours for Micron sales reps are 8:00 a.m. to 5:00 p.m. with an unpaid one-hour lunch break. Notwithstanding Micron's stated regular hours, Plaintiffs and other similarly-situated sales representatives regularly arrive at work earlier than 8:00 a.m.

Notwithstanding Micron's stated working hours, Plaintiffs and other similarly-situated sales representatives regularly stay well past the 5:00 p.m. quitting time. Notwithstanding Micron's hour-long unpaid lunch, Plaintiffs and other similarly-situated sales representatives frequently work through the lunch hour.

22. It is Defendant Micron's stated practice or policy to pay overtime to sales representatives. Notwithstanding its stated practice and policy, Plaintiffs and other similarly-situated sales representatives have, from time-to-time been warned that they cannot record more than forty seven (47) hours of work in a given workweek. Plaintiffs and other similarly-situated sales representatives have consistently worked many hours in excess of 47 in a workweek and Micron failed to pay them for all hours worked.

23. Management at Defendant Micron discourages Plaintiffs and other similarly-situated sales representatives from accurately recording their time spent working for Micron by verbally reprimanding employees who may have recorded too much overtime.

24. Management at Defendant Micron also encourages off-the-clock work by leading sales representatives to believe that the sales representative position is the beginning of a career path that will lead to a more managerial position at higher wages. The conventional myth perpetuated by Micron is that sales representatives should spend time - at no charge to the employer - preparing themselves for future positions with Micron. Sales representatives are therefore reluctant to claim all their overtime hours since they would appear to be less professional.

25. Defendant Micron has a practice or policy of intentionally altering time records to reduce wage and overtime claims. Plaintiffs and sales representatives who are similarly-situated keep their time records on their computers. These time records automatically default to a forty-hour

per week schedule. Plaintiffs and sales representatives who are similarly situated can overwrite the automatic default to enter the correct hours worked. Time records are approved at the end of the week by either a supervisor or someone in Micron's payroll department. Micron managers or supervisors are afforded the capability of changing or altering a sales representative's timecard. Upon information and belief, Managers and supervisors regularly alter sales representatives' time cards for the purpose of diminishing overtime.

26. Defendant Micron's practices and policies lead to the improper calculation of overtime hours by failing to include Plaintiffs' and similarly-situated sales representatives' commissions in the calculations of their overtime wage rates.

27. Plaintiffs, since being employed by Micron, have worked on average 50 to 60 hours per week without receiving overtime pay and/or without receiving properly calculated overtime pay for those hours worked in excess of 40. With full knowledge and permission of, as well as pressure by, her superiors at Defendant Micron, Plaintiffs frequently began work before 7:00 a.m., worked through breaks and lunches, and worked after 5:00 p.m. On several occasions, Plaintiffs worked all night on projects. Plaintiffs did not get paid for all these hours they were allowed to work.

28. Upon information and belief, all sales representatives who were and are similarly situated with Plaintiffs, from time-to-time worked many hours in excess of 40 in a week without receiving overtime pay and/or without receiving properly calculated overtime pay.

CLASS ALLEGATIONS

29. Plaintiffs incorporate paragraphs 1 through 28 above.

30. Plaintiffs are appropriate representatives for employees of Defendant Micron who have been denied overtime compensation as a result of Defendant Micron's violation of the FLSA.

The potential class of Plaintiffs consists of all current and former employees of Defendant Micron who were employed at any time during the applicable limitations period or during such period as the Court may designate pursuant to equitable tolling of the limitations period and who were or are assigned to duties as non-exempt sales representatives and who do not qualify for a statutory exemption to the overtime requirements of the FLSA ("the class"). Plaintiffs and the above-described individuals or the class are "similarly-situated employees" within the meaning of Section 16(b) of the FLSA.

31. Defendant Micron is in possession of the names, addresses and employment records of those persons similarly-situated to Plaintiffs and whom Plaintiffs seek to represent. Pursuant to Section 16(b) of the FLSA, these individuals are entitled to court-administered notice of this lawsuit in order that they may elect or decline to join Plaintiffs in the prosecution of this action.

32. The class of current and former employees of Defendant Micron as described above is so numerous that joinder of all members is impracticable. During the applicable periods of limitations prior to the commencement of this action, Defendant Micron has employed several hundred sales representatives.

33. There are questions of law and fact common to the class. The employment policies, practices and agreements of Defendant Micron raise questions of law and fact common to the class, including

(A) whether Defendant has engaged in a pattern or practice of failing to keep accurate records showing all the time it permitted Plaintiffs and the class to work and failing to provide wage statements itemizing all wages earned and all deductions from wages;

(B) whether Defendant Micron has engaged in a pattern or practice of permitting

Plaintiffs and the class to work without paying for all time worked at the agreed rates or the applicable federal and state overtime rates;

(C) whether Defendant Micron has engaged in a pattern or practice of encouraging Plaintiffs and the class not to report, and discouraging them from reporting, all time worked;

(D) whether Defendant Micron has engaged in a pattern or practice of threatening Plaintiffs and the class with discharge or other discrimination if they make wage claims for unrecorded time Defendant Micron has permitted them to work;

(E) whether Defendant Micron willfully failed to pay Plaintiffs and the class at the agreed wage or the applicable overtime rates for the work Defendant Micron permitted them to perform;

(F) whether Defendant Micron has engaged in a pattern or practice of failing to permit Plaintiffs and the class to take rest breaks on the employer's time.

(G) whether Defendant Micron has improperly excluded commissions from the calculation of the overtime rate; and

(H) whether Defendant Micron has engaged in a pattern or practice of suppressing wage claims.

34. The claims of Plaintiffs as representative parties are typical of the claims of the class. Plaintiffs' claims encompass the challenged practices and course of conduct of Defendant Micron. Plaintiffs' legal claims arising out of the course of conduct by Defendant Micron are based on the same legal theories as the claims of the unnamed class members. The legal issues as to which federal and state laws are violated by such conduct apply equally to Plaintiffs and the class.

35. Plaintiffs as representative parties will fairly and adequately protect the interests of

the class.

36. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendant Micron.

37. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

38. Defendant Micron has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

39. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CLAIM FOR RELIEF

(FLSA and pendent state law claims)

40. Plaintiffs incorporate paragraphs 1 through 39 above.

41. The FLSA regulates, among other things, the payment of overtime pay by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. Section 207(a)(1). Defendant Micron is, and was at all relevant times, subject to the overtime pay requirements of the FLSA, because it is an enterprise engaged in commerce and its employees

are engaged in commerce.

42. Section 7(a)(1) of the FLSA, 29 U.S.C. 207(a)(1), requires employers to pay non-exempt employees who work longer than forty (40) hours in a workweek one and one-half times the employee's regular rate of pay for the hours worked in the workweek in excess of forty (40) hours. Defendant Micron is, and was at all relevant times, subject to this requirement to pay non-exempt employees one and one-half times its employees' regular rate of pay, including sales commissions, for all hours worked in a workweek in excess of forty (40) hours. Defendant Micron violated the FLSA by failing to pay its non-exempt employees for the number of hours they were actually allowed to perform work in excess of forty (40) hours in a workweek.

43. The conduct of Defendant Micron, as described above, has violated the FLSA by additional conduct which includes but is not limited to the following:

- (A) permitting Plaintiffs and the class to work without paying for all time worked, either at the agreed rates or the applicable overtime rate;

- (B) failing to include commissions in the calculation of the overtime rate;

- (C) failing to keep accurate records showing all the time worked by Plaintiffs and the class that Defendant Micron permitted them to work and all wages earned; and failing to provide wage statements itemizing all wages earned;

- (D) threatening to discharge or otherwise discriminate against employees who make wage claims for unrecorded time Defendant Micron has permitted them to work;

- (E) failing to permit rest breaks on the employer's time;

- (F) threatening employees who make claims for unpaid wages for work Defendant Micron has permitted them to perform off the clock with discipline up to and including dismissal;

(G) engaging in a pattern or practice of unlawfully indemnifying itself with employees against liability for payment of wages; and

(H) engaging in a pattern or practice of (1) violating wage laws, and (2) suppressing wage claims.

44. Section 13 of the FLSA, 29 U.S.C. Section 213, exempts certain categories of employees from the overtime pay obligations set forth under Section 7(a)(1) of the FLSA. The exemptions include employees who are paid on a salary basis and are employed in a bona fide executive, administrative or professional exemption. 29 U.S.C., Section 213(a)(1). None of the FLSA exemptions apply to Plaintiffs nor to the class. Accordingly, Plaintiffs and the class must be paid overtime pay in accordance with Section 7 of the FLSA.

45. Plaintiffs seek class-wide relief against Defendant Micron and for the patterns and practices of unlawful conduct described above.

46. Plaintiffs and the class are entitled to damages equal to the amount of overtime premium pay within the three years preceding the filing of this complaint, plus periods of equitable tolling. Defendant Micron's failure to pay overtime pay to Plaintiffs and the class was "willful" within the meaning of Section 6(a) of the Portal-to-Portal Pay Act, 29 U.S.C. Section 255(a), since Defendant Micron did not act in good faith in failing to pay proper overtime pay and had no reason to believe that its failure to do so was not a violation of the FLSA, within the meaning of Section 11 of the Portal-to-Portal Pay Act, 29 U.S.C. Section 260. Accordingly, Plaintiffs and the class are entitled to an award of liquidated damages in an amount equal to the amount of unpaid overtime pay described above, pursuant to Section 16(b) of the FLSA. Alternatively, should the Court find that Defendant Micron did not act willfully in failing to pay overtime pay, Plaintiffs and the class are

entitled to an award of prejudgment interest at the applicable legal rate. Attorneys' fees and costs, pursuant to Section 16(b) of the FLSA, 29 U.S.C. Section 216(b), should also be awarded.

47. Defendant Micron's above-described conduct also violates the applicable state laws of its operations, including but not limited to Section 44-1502(3), Idaho Code.

48. Defendant Micron's conduct as described above is unlawful under federal and state law, is continuing, is capable of repetition, and will continue unless restrained and enjoined by the court. Plaintiffs and the class have no plain, speedy and adequate remedy at law to redress this continuing unlawful conduct and injunctive relief is necessary and proper.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendant Micron as follows:

1. For the Court's Order authorizing the mailing of a notice to all potential class members and approving the form and content of said notice.
2. For compensatory damages against Defendant Micron for Plaintiffs and the class, including but not limited to, compensation for unrecorded work time and liquidated and exemplary damages and penalties, all in amounts to be proved at trial.
3. For injunctive relief requiring Defendant Micron to (a) pay employees at the agreed rates and proper overtime rates for all time worked by employees that Defendant Micron permits them to work, (b) to keep accurate records showing all the time worked by employees that Defendant Micron permits them to work and all wages earned, and provide wage statements itemizing all wages earned, (c) to cease threatening to discharge or otherwise discriminate against employees who assert claims for unpaid wages for unrecorded work Defendant Micron has permitted them to perform, and (d) to provide rest breaks on the employer's time as required by law.

4. For a corresponding declaration of (a) the rights of Plaintiffs and the class under various applicable state laws, and (b) the obligations of Defendant Micron under individual employment agreements and various applicable state laws.

5. For pre-judgment interest.

6. For costs of litigation, including attorneys' fees, pursuant to, *inter alia*, 29 U.S.C. § 216(b).

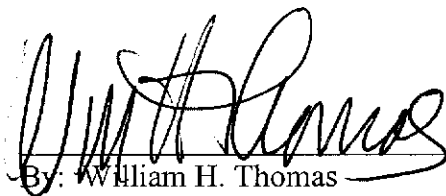
7. For such other and further relief as the Court deems proper.

JURY DEMAND

Plaintiffs demand a jury trial.

DATED this 8th day of June, 2001.

HUNTLEY, PARK, THOMAS, BURKETT,
OLSEN & WILLIAMS



By: William H. Thomas

Attorneys for Plaintiffs